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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

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F.B., minor, by and through his mother } Case No.:  
Carrie Burns, }  
Plaintiff, } COMPLAINT  
v. } Plaintiff requests jury trial  
Boys & Girls Clubs of the Valley, Inc., }  
Defendant }  
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Plaintiff respectfully files this Complaint by and through undersigned counsel as follows:

## INTRODUCTION

Defendant Boys & Girls Clubs of the Valley, Inc. (“BGCAZ”) provides an after-school program and receives federal funding, which allows BGCAZ to offer the program to the public. As such, BGCAZ is required to provide reasonable accommodations to all program participants with disabilities under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131, *et seq.*, and section 504 of the Rehabilitation Act of 1973 (the “Rehabilitation Act”), 29 U.S.C. § 701, *et seq.*.

Plaintiff F.B. is disabled, as defined by the ADA and Rehabilitation Act. In or around August 2020 for only a short while because at that time the program was virtual. F.B. returned to the BGCAZ to participate in the after-school program on or around March 2021. F.B.'s participation is crucial to his family's survival, because it allows his mother to work. Although BGCAZ did initially provide accommodations on an informal basis, starting around October 2021, the accommodations were no longer provided. F.B.'s mother repeatedly met with and requested accommodations for F.B.. However, the new staff at BGCAZ refused to provide for reasonable accommodations and/or modifications to policies in order for F.B. to meaningfully participate in the after school program. Thus, BGCAZ violated the ADA and the Rehabilitation Act.

In addition, BGCAZ engaged in intentional discrimination when, despite being aware of F.B.'s needs, they continued to fail to provide reasonable accommodations and drew attention to F.B.'s disabilities in the after-school program among his peers. After committing

1 such discrimination, BGCAZ then refused to modify their disciplinary policy, as required by  
2 both the ADA and Rehabilitation Act, and repeatedly suspended F.B. from the program  
3 and/or required that he leave early because of his conduct in response to BGCAZ's  
4 discrimination.

6 Plaintiff seeks declaratory and injunctive relief to prevent BGCAZ from continuing its  
7 intentional illegal discriminatory actions, compensatory damages to remedy for denying F.B.  
8 the full and equal enjoyment of the benefits of and participation in Defendant's after school  
9 program, and attorneys' fees and costs to the fullest extent permitted by law.  
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## 12 **JURISDICTION AND VENUE**

- 13 1. 28 U.S.C. § 1331 confers jurisdiction to this Court. This action is authorized pursuant  
14 to the ADA, U.S.C. § 12101, *et seq.*, and Section 504 of the Rehabilitation Act, 29  
15 U.S.C., § 701, *et seq.*
- 16 2. Venue is proper in the District Court of Arizona pursuant to 28 U.S.C. § 1331(b), as all  
17 conduct giving rise to Plaintiff's claims arise in this District, and the Defendant is  
18 located in this District.

## 21 **PARTIES**

### 22 Plaintiff

- 23 3. Plaintiff F.B. is, a minor, born in 2014. Plaintiff F.B. and his mother, Carrie Burns,  
24 reside in Maricopa County, Arizona.
- 25 4. F.B. is a seven-year-old child with a diagnosis of Attention Deficit Hyperactivity  
26 Disorder ("ADHD") and Rejection Sensitive Dysphoria ("RSD"). These conditions  
27

1 result in F.B.'s difficulties with focus and emotional regulation. RSD also makes it  
2 difficult for F.B. to manage social or behavioral corrections and perceived criticism  
3 from others. These conditions are a disability as defined by 28 C.F.R. § 36.105, such  
4 that at all times F.B. was a qualified individual with a disability within the meaning of  
5 the ADA and the Rehabilitation Act.

7 **Defendant**

8 5. Defendant Boys & Girls Clubs of the Valley ("BGCAZ") is a place of public  
9 accommodation as defined by the ADA. BGCAZ represents that is comprised of  
10 "twenty-seven clubhouses, one dental clinic, and an administrative and youth  
11 conference center in the Metropolitan Phoenix area", and serves approximately 15,000  
12 children ages six to eighteen.<sup>1</sup>

13 6. BGCAZ is an Arizona nonprofit corporation that is affiliated with the national Boys &  
14 Girls Clubs of America.

15 7. BGCAZ's Gilbert Branch provides an after-school program which offers services to  
16 elementary aged children.

20 **FACTS**

21 **F.B.'s Background with BGCAZ**

23 8. F.B. is a first grader who resides with his family in Gilbert, Arizona.  
24 9. F.B. attends school at Gilbert Elementary School and began being provided  
25 accommodations for his disabilities at his school under a 504 Plan in February 2021.

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<sup>1</sup> *Boys & Girls Clubs of the Valley, Inc. Consolidated Financial Statements, Period from  
Inception (January 1, 2020) to June 30, 2020.*

10. In March 2021, F.B.'s mother, Carrie Burns, enrolled F.B. into BGCAZ's after school  
2 program at the Gilbert Branch, which is within 0.1 miles of F.B.'s school.
- 3
4. Costs to attend the BGCAZ's after school program are \$40-\$80 per month, plus an  
5 annual membership of \$30 per year.
- 6
7. Carrie Burns provided BGCAZ with the documentation of F.B.'s diagnoses along with  
8 a request for accommodations, such as providing him with a safe space with visual  
9 privacy when he needed to emotionally regulate, ignoring minor disruptive behaviors,  
10 being flexible about allowing him to move around the space, and how staff would  
11 communicate and interact with F.B., such as by providing redirection in a discrete  
12 manner or in private and by offering gentle, non-critical reminders of expected  
13 behavior.
- 14
15. Between March 2021 and October 2021, F.B. participated in the BGCAZ after school  
16 program with only minimal issues because BGCAZ staff provided the  
17 accommodations that Carrie Burns requested. These included staff's manner of  
18 communications with F.B., so that they were focused on positive and constructive  
19 feedback rather than a punishing or punitive tone, as well as providing F.B. with a safe  
20 space where he could decompress out of his peers' sight. The safe space for F.B. to  
21 emotionally regulate can be any small space that is visually shielded from peers, such  
22 as a tent or large box in the classroom, a being able to sit under a table or desk that has  
23 three sides shielded, a closet, or a space that is otherwise screened-off so that he is not  
24 within his peers' sightlines.
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1 14. Between March 2021 and October 2021, BGCAZ staff provided the safe space  
2 accommodation by allowing F.B. to crawl under a desk in the administrative area so  
3 that he was not away from adults, but felt like he had a protective barrier from his  
4 classmates. This accommodation is not expensive and does not take F.B. outside the  
5 group space, such that he would require extended one-on-one attention from staff  
6 members.  
7

8 **BGCAZ Denies Accommodations and Begins to Discriminate**  
9

10 15. In October 2021, there was significant staff turnover at BGCAZ, and the new staff  
11 refused to continue the previous accommodations.  
12

13 16. The new staff also failed to accommodate F.B.’s need for flexibility with his  
14 movement, and would demand that he sit for extended periods. For example, during a  
15 60 to 90-minute “Power Hour” when children are required to focus on academics, F.B.  
16 is required to stay seated the entire time. When F.B. fails to comply, and gets up to  
17 move around the room, consistent with his A.D.H.D diagnosis which makes sitting  
18 without breaks for such a long period after a full day of school an impossible  
19 requirement, BCGAZ staff punish or publicly reprimand F.B..  
20

21 17. The new staff generally failed to provide positive and constructive communications to  
22 F.B. as requested, and instead F.B. is publicly reprimanded on a regular basis. This  
23 triggers his R.S.D.  
24

25 18. By way of example, F.B. recently sought a safe space by crawling under a desk and  
26 chairs in the after school Power Hour Program classroom. BGCAZ staff responded by  
27 trying to get F.B. to come out from under the desk, and engaging in these efforts in  
28

front of the entire class. As a result, all the children joined in the verbal cajoling and teasing. This response was the *opposite* of what BGCAZ claims is its conduct and the *opposite* of F.B.’s requested accommodation to ignoring minor disruptive behaviors and providing redirection in a private manner and with gentle reminders of expected behavior. The adults and children ganged up on F.B., exacerbating his heightened emotional state and distrust of BGCAZ because of its pervasive discrimination.

19. Because BGCAZ exacerbated and called attention to F.B.’s disability and failed to  
10 accommodate it in any meaningful way, F.B. now frequently refuses to go to the  
11 BGCAZ.

### 12 **BCGAZ Refuses to Stop Discriminating and Re-Implement Accommodations**

14. Carrie Burns’ repeatedly requested that the new BGCAZ staff accommodate F.B.’s  
15 disability in a manner similar to what had been done before, and worked so well.  
16. The fact that BGCAZ had been able to successfully provide F.B. with the requested  
17 accommodations and he had no significant behavioral issues during that time shows  
18 that the requested accommodations were both effective and reasonable.  
20. BGCAZ refused to provide the accommodations, delayed in responding to Ms. Burns’  
21 requests, and continues to discriminate against F.B. in its treatment of him and denial  
22 of accommodations to this day.  
23. Because BGCAZ took away the safe space for F.B. to decompress out of his peers’  
25 sight, F.B. no longer has a safe space to go to when emotionally dysregulated. As a  
26 result, F.B. began engaging in elopement behaviors, *i.e.*, he runs away from BGCAZ  
27

1 because it feels emotionally unsafe and he has nowhere to go. Thus, BGCAZ has to  
2 call his mother, Carrie Burns to pick up F.B. early from the program.  
3  
4 24. BGCAZ has a discipline policy that children who leave the area (elope) will be  
5 disciplined and possibly expelled.  
6  
7 25. Under BGCAZ' disciplinary policy, the repeated elopements resulted in F.B. being  
8 suspended for a longer period each time. To date, F.B. has been suspended for six days  
9 total, and BGCAZ has required, and continues to require, that he leave early on  
10 numerous occasions.  
11  
12 26. After the third suspension, Carrie Burns was told that if F.B. was suspended for a  
13 fourth time, he would be expelled from BGCAZ because that was the policy of the  
14 after school program.  
15  
16 27. BGCAZ refuses to modify this or any other disciplinary policy for F.B., despite its  
17 disparate impact on him as a disabled person.  
18  
19 28. Due to concerns with the possibility that F.B. would be expelled from the BGCAZ, on  
20 or around February 1, 2022, Carrie Burns sent a letter formally requesting  
21 accommodations for F.B.. Ms. Burns sent this letter because her previous verbal  
22 requests were either denied or ignored.  
23  
24 29. BGCAZ did not timely respond to Carrie Burns' request. Eventually, a meeting to  
25 discuss the accommodations was scheduled for March 29, 2022. This was almost two  
26 months after Carrie Burns had made her written request for accommodations.  
27  
28 30. BGCAZ staff told Ms. Burns that they could not provide the safe space under the desk  
in the office area that had been provided prior to October 2021, but they have not

1 offered any other safe space outside the view of F.B. peers. Without such an  
2 accommodation, Carrie Burns worries that F.B. will continue to elope, and would  
3 therefore be expelled and denied all services permanently.  
4

5 31. Carrie Burns retained legal counsel who sent a letter to the BGCAZ Gilbert Branch  
6 director on March 25, 2022. That letter repeated the request for the accommodations  
7 set forth in Carrie Burns' February 1, 2022 letter, along with an additional request for  
8 a modification to the discipline policy. In particular, the counsel's letter requested that  
9 the discipline policy be modified so that F.B. would not be expelled from BGCAZ's  
10 after school program if he were suspended a fourth time. The letter also requested a  
11 written response as to whether BGCAZ would provide the requested accommodations  
12 before convening a meeting between BGCAZ staff and Carrie Burns to discuss how to  
13 implement accommodations for F.B.  
14

15 32. BGCAZ gave no response before the scheduled March 29, 2022 meeting. So Carrie  
16 Burns' legal counsel requested that the meeting be cancelled.  
17

18 33. BGCAZ's response to the requested accommodations was received by Carrie Burns'  
19 legal counsel on April 6, 2022. BGCAZ's response falsely claimed that BGCAZ was  
20 already providing a number of reasonable accommodations and denied the requested  
21 accommodation of a safe space for F.B. to emotionally regulate. Instead, BGCAZ  
22 offered that F.B. could use the "red chair area." However, this area is used primarily as  
23 a place of discipline, and therefore is neither neutral or safe for F.B.'s purposes. Most  
24 importantly, the "red chair area" is in the open and offers no visual privacy to F.B.,  
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1 which he requires due to his RSD diagnosis. In short, BGCAZ refused to take any  
2 steps to fulfill its obligations under the ADA and the Rehabilitation Act.

3 34. Carrie Burns' legal counsel had also requested a modification to BGCAZ's discipline  
4 policies. However, BGCAZ's response fails to provide any modifications, but  
5 reiterates that F.B. could be subjected to discipline or expulsion. Unfortunately, until  
6 BGCAZ effectively provides all of the requested accommodations, F.B. is likely to  
7 continue to engage in the behaviors that could result in expulsion from BGCAZ. At the  
8 very least, F.B. will continue to be sent home early due to his behaviors resulting from  
9 BGCAZ's failure to provide accommodations.

10 35. F.B. is unable to meaningfully participate and benefit from the after school program at  
11 BGCAZ because his disability is not accommodated. Each suspension – triggered by  
12 BGCAZ's refusal to offer him a safe space to regulate his emotions or inadequate  
13 provision of the other requested accommodations – denies F.B. and his family from  
14 BGCAZ's services.

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**FIRST CAUSE OF ACTION**

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**Violation of Americans with Disabilities Act, Title III, 42 U.S.C. § 12182, et seq.**

21 36. Plaintiff incorporates each foregoing allegation as if fully set forth here.

22 37. F.B. is an individual with a disability as defined in 28 C.F.R. § 36.105.

23 38. BGCAZ is a place of public accommodation as defined by 28 C.F.R. § 36.104.

24 39. BGCAZ was at all relevant times on notice and was fully aware of F.B.'s disability  
25 and need for accommodations.

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1 40. BGCAZ violated the ADA and discriminated against F.B. by refusing to make  
2 reasonable accommodations necessary for F.B. to access BGCAZ's after school  
3 program and by refusing to make reasonable accommodations necessary for F.B. to  
4 have the opportunity to participate in or to benefit from its program in equal measure  
5 to the participation or benefit afforded to others without disabilities.

6 41. BGCAZ has intentionally discriminated against F.B. by acting with deliberate  
7 indifference to F.B.'s need for accommodations. At all relevant times, Defendant  
8 knew that denying F.B. his accommodations meant that, by reason of his disability, he  
9 would have great difficulty with continuing to participate in BGCAZ's after-school  
10 program. Furthermore, BGCAZ had in fact provided the accommodations between  
11 March 2021 and October 2021.

12 42. Thus, BGCAZ's refusal to provide the reasonable accommodations was willful.

13 43. F.B. suffers ongoing and irreparable harm as a result of BGCAZ's continued  
14 discrimination and violations of the ADA. This harm will continue until BGCAZ's  
15 conduct is declared unlawful and enjoined by this Court. There is no adequate remedy  
16 at law.

21 **SECOND CAUSE OF ACTION**

22 **Violation of the Rehabilitation Act, 29 U.S.C. § 701, *et seq.***

23 44. Plaintiff incorporates each foregoing allegation as if fully set forth here.

24 45. F.B. is a qualified individual with a disability under section 504 of the Rehabilitation  
25 Act in that his various psychological conditions cause substantial impairments in one  
26 or more major life activities.

- 1 46. F.B. has a 504 Plan in his school setting as a result of his disabilities.
- 2 47. BGCAZ is a place of public accommodation that receives federal funding, and is
- 3 therefore subject to the Rehabilitation Act. During the period from July 1, 2019 to June
- 4 30, 2020, BGCAZ received \$548,137 from the US Department of Agriculture,
- 5 \$341,403 from the US Department of Housing and Urban Development, \$104,186
- 6 from the US Department of Justice, \$179,466 from the US Department of Education,
- 7 and \$8,561 from the US Department of Health and Human Services. The total amount
- 8 of federal awards was \$1,181,753.
- 9 48. By accepting these federal funds, BGCAZ agreed that it would comply with the
- 10 requirements of the Rehabilitation Act by, among other things, making reasonable
- 11 accommodations for qualified individuals with disabilities.
- 12 49. BGCAZ is in violation of the Rehabilitation Act by failing and refusing to make
- 13 reasonable accommodations for F.B. to access BGCAZ's after school program by not
- 14 affording F.B. an equal an opportunity to participate in the program as afforded to
- 15 others without disabilities.
- 16 50. BGCAZ's after school program is available to elementary-aged children Monday
- 17 through Friday until 7:00 PM. Because BGCAZ fails to provide accommodations or
- 18 modifications to its discipline policies, F.B. has only been able to attend until 4:30 PM.
- 19 51. BGCAZ has intentionally discriminated against F.B. by acting with deliberate
- 20 indifference to F.B.'s need for accommodations since October 2021.
- 21 52. At all relevant times, Defendant knew that denying F.B. his accommodations meant
- 22 that, by reason of his disability, he would have great difficulty continuing to

1 participate in BGCAZ's after-school program. Furthermore, BGCAZ had in fact  
2 provided the accommodations between March 2021 and October 2021, indicating that  
3 the requested accommodations were reasonable and readily achievable.  
4

53. Consequently, F.B. is suffering ongoing and irreparable harm by the BGCAZ's  
6 violations of the Rehabilitation Act, and the harm will continue unless and until the  
7 Defendant's conduct is declared unlawful and is enjoined by this Court. There is no  
8 adequate remedy at law.  
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request that the Court:  
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13 A. Issue an order for declaratory relief, declaring that Defendant BGCAZ's  
14 conduct in denying F.B.'s request for accommodations and modifications to the  
15 discipline policy is unlawful and in violation of Title III of the ADA and section  
16 504 of the Rehabilitation Act;  
17

18 B. Issue a permanent injunction and other equitable relief necessary to  
19 permanently and forever prevent BGCAZ from discriminating against F.B. or  
20 any disabled qualified participant in BGCAZ programs, including but not  
21 limited to:  
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23 a. An order that BGCAZ implement and execute adequate policies, procedures  
24 and programs to prevent and remedy disability discrimination and  
25 retaliation, and to eradicate the effects of BGCAZ's past unlawful practices;  
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27 b. An order that BGCAZ implement adequate company-wide training on bias,  
28 stereotypes, the importance of reasonable accommodations and inclusion of

1 qualified disabled individuals, and internal accountability on reducing and  
2 preventing disability discrimination and providing reasonable  
3 accommodations;

4

5 c. Court monitored evaluation of the adequacy of company-wide training  
6 programs and the effect of these programs on disabled program participants;  
7

8 d. Other equitable relief necessary to bring BGCAZ into and remain in  
9 compliance with the law.

10 C. An award of actual and compensatory damages to be proven at trial;  
11 D. An award of attorneys' fees, expert fees, costs of suit, and reasonable expenses  
12 under any applicable law;  
13 E. An award of pre-judgment and post-judgment interest at the highest lawful  
14 rates; and  
15 F. Such other legal and equitable relief to which F.B. is justly entitled.

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18 Respectfully submitted.

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21 Susan Marks  
22 Co-Counsel for Plaintiff

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26 Patricia E. Ronan  
27 Co-Counsel for Plaintiff

28 DATED: April 12, 2022 \_\_\_\_\_

1 *s/Susan Marks*  
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